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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 OAKLAND DIVISION

15 UNITED STATES OF AMERICA, ) NO. CR 16-0515 YGR  
16 Plaintiff, ) GOVERNMENT'S NOTICE OF WITHDRAWAL  
17 v. ) OF PLEA OFFER, REQUEST TO VACATE  
18 KENNETH BRESLIN, ) FEBRUARY 8, 2018 SENTENCING DATE, AND  
19 Defendant. ) REQUEST FOR A STATUS CONFERENCE

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20 On July 6, 2017, the parties submitted a proposed Plea Agreement to the Court. Dkt. #41. On  
21 July 13, 2017, the parties appeared in Court, and noted that a proposed plea agreement was submitted to  
22 the Court on July 6, 2017. Dkt. #41. At that hearing, the Court continued the case to October 26, 2017,  
23 for a combined change-of-plea hearing and sentencing hearing (with an exclusion of time under the  
24 Speedy Trial Act). Id. Defendant, Kenneth Breslin, signed a form entitled "Consent to Institute a  
25 Presentence Investigation and Disclose the Report Before Conviction or Plea of Guilty." Dkt. #42. On  
26 September 6, 2017, following a final bond violation hearing, Magistrate Corley remanded Mr. Breslin to  
27 the custody of the United States Marshal. Dkt. #47. On September 22, 2017, the Court granted the  
28 parties' stipulated request to continue the change-of-plea hearing and sentencing hearing to February 8,  
2018, and exclude time under the Speedy Trial Act. Dkt. #50. Since September 6, 2017, the  
government has engaged in an investigation into Mr. Breslin's alleged additional criminal conduct.

WITHDRAWAL OF PLEA OFFER  
CR 16-0515 YGR

1 A plea agreement is not effective until it is accepted by the Court. In this case, the Court has not  
2 yet conducted the Rule 11 plea colloquy. Additionally the government is not bound by the proposed  
3 plea agreement until the plea agreement is accepted by the Court. See United States v. Savage, 978 F.2d  
4 1136, 1138 (9th Cir. 1992). “As a general rule, then, we think that either party should be entitled to  
5 modify its position and even withdraw its consent to the bargain until the plea is tendered and the  
6 bargain as it then exists is accepted by the court.” Id. at 1138 (quoting United States v. Ocanas, 628  
7 F.2d 353, 358 (5th Cir.1980)). “We hold that neither the defendant nor the government is bound by a  
8 plea agreement until it is approved by the court.” Id. See also, United States v. Fagan, 996 F.2d 1009,  
9 1013 (9th Cir.1993) (“[a] plea agreement that has not been entered and accepted by the trial court does  
10 not bind the parties.” (quoting Mabry v. Johnson, 467 U.S. 504, 1984)); Ocanas, 628 F.2d at 358 (unless  
11 and until the trial judge approves a plea agreement and accepts a guilty plea, neither party is justified in  
12 relying substantially on the bargain)).

13       Based upon the government's belief that Mr. Breslin has committed new federal crimes,  
14       repeatedly and flagrantly violated the conditions of his pretrial release, and failed to clearly demonstrate  
15       acceptance of responsibility for his offense, the government hereby withdraws the plea offer. The  
16       government has informed defense counsel and the assigned United States Probation Officer of the  
17       withdrawal of the plea offer. The government requests that the Court vacate the February 8, 2018 date  
18       and set this matter on calendar for a status conference at the Court's convenience. Government counsel  
19       is informed that counsel for Mr. Breslin is unavailable on January 25, 2018.

21 | DATED: January 9, 2018

Respectfully submitted,

ALEX G. TSE  
Acting United States Attorney

/s/ Christina McCall  
CHRISTINA McCALL  
Assistant United States Attorney